



PATENT
454321-3156

TECH CENTER 1609/2900

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REMARKS

Reconsideration and withdrawal of the objections to and/or rejections of the application are respectfully requested in view of the amendments and remarks herewith.

Formal Matters – The Now Pending Claims

Claims 73-111 are now pending. These claims are based on the entire application as originally filed, especially the claims and specification originally filed; and, these claims particularly are based on the elected claims, and represent the elected claims with grammatical improvement imparted thereto.

It is submitted that the claims, as originally presented, are patentably distinct over the art, and that those claims were in full compliance with the requirements of 35 U.S.C. 112. The amendments and the remarks made herein are not made for the purpose of patentability within the meaning of 35 U.S.C. §§101, 102, 103 or 112. Rather, the amendments and remarks are made simply for clarification (e.g., for grammatical improvement) and to round out the scope of protection to which Applicant is entitled.

Accordingly, the new claims are presented, without prejudice, without admission, without surrender of subject matter, and without any intention of creating any estoppel as to equivalents.

Since previously it is believed that there were 72 numbered claims, but with multiple dependents 79 claims in total, with more than one independent claim, and that claims 73-111 herewith represent 39 claims in total with two (2) independent claims, it is further believed that no additional claim fee should be due as a result of the new claims herewith. However, any fee occasioned by this paper, including with respect to the new claims herewith and the Information Disclosure Statement herein, may be charged, or any overpayment credited, to Deposit Account No. 50-0320.

There Were No Art Rejections – The Claimed Subject Matter Is Allowable

It is noted that the January 2, 2002 Office Action contained no art rejections. Accordingly, it is understood that the elected claimed subject matter has been deemed by the Examiner to be free of the art; and, confirmation thereof is respectfully requested.¹

¹ It is also noted that since the new claims herewith parallel the elected claims, except for improvements in grammar, if there is a next office action and that next office action contains any art rejections, that next office action cannot be made final as this paper cannot have been said to have necessitated an art rejection.

The Rejections Are All Overcome

Claims 20-32 were rejected under Section 101, with the Examiner seeking a recitation of “isolated” or “purified”. The new claims herewith include the grammatical improvement of reciting “isolated”. Ergo, while the Section 101 rejection is moot in view of the cancellation of claims 20-32, the new claims herewith should not be subject to such a rejection; and, reconsideration and withdrawal of the Section 101 rejection are respectfully requested.

Claims 50-52, 55-57, 61, 67-69 were rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a 13kDa polypeptide purified from *B. burgdorferi*, B313 inducing antibody production in rabbits, allegedly does not reasonably provide enablement for vaccines. The new claims herewith include the grammatical improvement of reciting “immunological composition”. Ergo, while this Section 112, first paragraph, rejection is moot in view of the cancellation of claims 50-52, 55-57, 61, 67-69, the new claims herewith should not be subject to such a rejection; and, reconsideration and withdrawal of the Section 112, first paragraph, rejection are respectfully requested.

Claims 20-35, 50-52, 55-57, 59, 61 and 65 were rejected under 35 U.S.C. 112, second paragraph, as being allegedly indefinite for allegedly failing to particularly point out and distinctly point out and distinctly claim the subject matter which applicant regards as the invention. The new claims herewith employ the grammatical improvement of reciting “first polypeptide” and “second polypeptide”, etc. Ergo, while this Section 112, second paragraph, rejection is moot in view of the cancellation of claims 20-35, 50-52, 55-57, 59, 61 and 65, the new claims herewith should not be subject to such a rejection; and, reconsideration and withdrawal of the Section 112, second paragraph, rejection are respectfully requested.

Accordingly, in the rejections are moot and the grammatical improvements of the new claims address and overcome the rejections. Therefore, reconsideration and withdrawal of the rejections of the Office Action are respectfully requested.

The Information Disclosure Statement

The Examiner’s attention is respectfully directed to the following documents, a copy of each of which is enclosed, and which are listed on the enclosed (in duplicate) PTO 1449; and, which are not believed to impact upon negatively upon the above-mentioned “free of the art” status of the claims. The Examiner is respectfully invited to consider and make of record the following documents.

U.S. Patent No. 6,300,101: Methods and compositions including a 13kD B. burgdorferi protein

U.S. Patent No. 6,296,849: Methods and compositions including a 13kDa B. burgdorferi protein

U.S. Patent No. 6,203,798: Borrelia antigen

U.S. Patent No. 6,183,986: OspA DNA and lyme disease vaccine

U.S. Patent No. 6,143,872: Borrelia burgdorferi Osp A and B proteins and immunogenic peptides

U.S. Patent No. 6,090,586: 66 kDa antigen from Borrelia

U.S. Patent No. 6,083,722: Borrelia antigen

U.S. Patent No. 6,068,842: 66 kDa antigen from Borrelia

U.S. Patent No. 6,054,296: 66 kDa antigen from Borrelia

U.S. Patent No. 5,777,095: Osp A and B Sequence of Borrelia burgdorferi strains ACA1 and IP90

U.S. Patent No. 5,688,512: Borrelia antigen

U.S. Patent No. 5,582,990: DNA encoding borrelia burgdorferi OspA and a method for diagnosing borrelia burgdorferi infection

U.S. Patent No. 5,523,089: Borrelia antigen

Request For Interview

If any issue remains as an impediment to allowance, prior to any paper other than a Notice of Allowance issuing, an interview is respectfully requested and the Examiner is respectfully invited to contact the undersigned to arrange a mutually convenient time and manner therefor.

Conclusion

In view of the amendments and remarks herewith, the application is in condition for allowance.

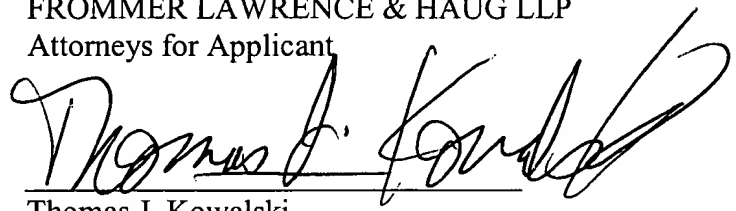
Early and favorable reconsideration of the application, reconsideration and withdrawal of the rejections, and prompt issuance of a Notice of Allowance, or promptly conducting the herein requested interview, are all respectfully requested.

And again, if any fee is determined to be due as a result of this paper, the Commissioner is authorized to charge the fee therefor or credit any overpayment in fees to Deposit Account No. 50-0320.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP
Attorneys for Applicant

By:

A handwritten signature in black ink, appearing to read "Thomas J. Kowalski", written over a horizontal line.

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